

1 Ken McKenna, Esq.  
2 Bar No. 1676  
3 544 West 1<sup>ST</sup> Street  
4 RENO, NV 89503  
5 (775) 329-6373

6 UNITED STATES DISTRICT COURT  
7  
8 DISTRICT OF NEVADA

9 NAM LAU,

10 Plaintiff,

11 vs.

**COMPLAINT AND JURY  
DEMAND**

12 FHR CORPORATION, dba RENO HILTON.

13 Defendant.  
14 \_\_\_\_\_/

15 COMES NOW Plaintiff, through his attorney of record, Kenneth McKenna, hereby  
16 complains of Defendant as follows:  
17

18 **Parties and Jurisdiction**  
19

- 20 1. Plaintiff is and adult, competent man who was previously employed by Defendant  
21 in Reno, Nevada. All acts, statements, and omissions alleged herein occurred in  
22 Northern Nevada. Plaintiff has obtained a "Notice of Right to Sue" from the  
23 Equal Employment Opportunity Commission. This Complaint and Jury Demand  
24 is timely filed in accordance therewith. Plaintiff hereby requests a jury trial  
25 relative to all issues so triable.  
26  
27  
28

2. Defendant FHR Corp. dba Reno Hilton, is a corporation engaged in the business of hotels. All acts, statements, and omissions alleged herein occurred while Plaintiff was employed by Defendant in their Reno, Nevada location.
3. This Court has subject matter jurisdiction over this case pursuant to Title VII of the 1964 Civil Rights Act, as amended in 1991.

### **Facts**

4. On or about May 20, 1997, Plaintiff was hired by Defendant Food Server.
5. In January of 2004 Plaintiff complained to Human Resources department that Asian food servers were not being allowed the required work breaks or lunches.
6. On or about January of 2005 and February of 2005, Plaintiff complained to the Union regarding unfair schedule practices by Defendant.
7. On or about January of 2005, Plaintiff complained to Defendants Employee Relations Manager Ed (last name unknown at this point) in the Human Resources department of the unfair schedule practices for the Asian food servers.
8. After Plaintiff told the Union of the Defendants unfair practices, Plaintiff was told by fellow employee Cherry Castillo told Plaintiff that Bill Russell a union representative told her that the Plaintiff should "watch out Paul(last name unknown at this time), head of food and beverage, knows you (Plaintiff) went to the Human Resources Department and complained about Defendants".
9. After lodging a complaint with Human Resources, in January of 2005, Plaintiff received a "Performance Improvement Notice" from Tula Letuli for "poor job performance based on Legendary Standards." (Exhibit "A"). Plaintiff received

1 this reprimand even though other employees, who were not reprimanded, scored  
2 lower on the test.

3 10. On or about March 11, 2005, Plaintiff received a "Performance Improvement  
4 Notice" from Mark Wilson reprimanding Plaintiff for an "improper call-in."  
5 (Exhibit "B"). This warning was completely baseless and without support.  
6

7 11. On or about March 28, 2005, Plaintiff again received a baseless reprimand.

8 12. On or about March 28, 2005, Plaintiff lodged an "Employment Complaint" with  
9 the Nevada Office of the Labor Commissioner indicating that Defendant had  
10 failed to provide Plaintiff with the required level of work breaks after Plaintiff  
11 worked six (6) or more hours. (Exhibit "C").  
12

13 13. On or about September 15, 2005, Plaintiff's shift was changed to a less desirable  
14 shift and his hours were changed from eight (8) hour days to ten (10) hour days.

15 14. Plaintiff continued to not be provided the required level of work breaks during his  
16 shifts.  
17

18 **First Cause of Action**

19 **(Hostile and/or Offensive Work Environment)**

20 15. Plaintiff hereby incorporates the allegations contained in paragraphs 1 through  
21 11 as though the same were stated fully herein.  
22

23 16. Plaintiff has been subjected by Defendant to a racially hostile and/or offensive  
24 work environment by discriminating against him. Said discrimination includes,  
25 but is not limited to, failing to provide Plaintiff, and other Asians, with the  
26 required level of work breaks, altering Plaintiff's work shift to one which is less  
27 desirable and less lucrative and providing Plaintiff with baseless reprimands.  
28

1 17. Plaintiff repeatedly complained regarding the discriminatory behavior to which he  
2 was being subjected to, but the discriminatory behavior continued.

3 18. Defendant knew or should have known, that Plaintiff was subjected to such an  
4 environment but failed to implement any timely, adequate remedial action.

5 19. The conduct to which Plaintiff was subjected was unlawful in that it violated  
6 Title VII of the United States Code and created a hostile and/or discriminatory  
7 work environment.  
8

9 20. As a direct and proximate result of being subjected to said environment Plaintiff  
10 suffered extreme physical and emotional distress, lost wages and loss of  
11 enjoyment of life and humiliation.  
12

13 21. It has been necessary for Plaintiff to incur costs and to retain counsel in order to  
14 prosecute this action.  
15

16 **Second Cause of Action**

17 **(Retaliation)**

18 22. Plaintiff hereby incorporates the allegations contained in paragraphs 1 through  
19 18 as though the same were stated fully herein.

20 23. Plaintiff was a solid performer who was employed by Defendant for over seven  
21 (7) years without incident.  
22

23 24. Plaintiff was retaliated against after reporting racially motivated violations of  
24 work break policy to both Defendant Human Resources and to the Nevada Office  
25 of the Labor Commissioner. Such retaliation includes, but is not limited to, being  
26 provided with baseless reprimands and having his shift changed to a significantly  
27 less desirable shift.  
28

1 25. The reporting of racial discrimination and harassment as well as violations of  
2 work break policy is in furtherance of public policy.

3 26. Defendant's actions were in retaliation of Plaintiff reporting racially motivated  
4 violations of work break policy to both Defendant Human Resources and to the  
5 Nevada Office of the Labor Commissioner.  
6

7 27. As a direct and proximate result of Defendant's retaliation, Plaintiff has suffered  
8 extreme physical and emotional distress, loss of enjoyment of life, economic  
9 harm, injury to his reputation, and humiliation in front of his peers.  
10

11  
12 WHEREFORE, Plaintiff prays for relief as follows:

- 13 1. For maximum award of compensatory and/or punitive damages available pursuant  
14 to Title VII of the United States Code.  
15  
16 2. For an award of economic damages according to proof;  
17  
18 3. For an award of costs and a reasonable attorney's fee;  
19  
20 4. And for such other and further relief, including injunctive relief to force the  
21 Defendant to adopt and enforce lawful policies regarding harassment and  
22 discrimination, as the Court or jury may deem proper.  
23

24 DATED this 21 day of June, 2006

25 By: 

26 Kenneth J. McKenna, Esq.  
27 544 West First Street  
28 Reno, Nevada 89503  
(775) 329-6373

**Exhibit A**



*Reno Hilton***Performance Improvement Notice**

EMPLOYEE NAME: Nam Lau	POSITION: Food Server	DATE OF INCIDENT: Jan. 2005
DEPT./GAME: Asiana	MANAGER: Tula Letuli	D.O.H. 5/22/97
		I.D.# 79769

YOUR CONDUCT AND / OR WORK PERFORMANCE IS UNSATISFACTORY FOR THE FOLLOWING REASON:

1. ☒ RECORD OF PROCEDURAL ERROR**R•O•P•E**2. ☐ EMPLOYMENT RULES VIOLATION**E•R•V**3. ☐ OTHER DISCIPLINARY ACTION

DESCRIBE THE UNSATISFACTORY CONDUCT OR PERFORMANCE:

Poor job performance based on Legendary Standards. See Attached.

WITNESS(ES) INVOLVED:

Tula Letuli, Bestmark

PREVIOUS INCIDENT(S):

CORRECTIVE ACTION TAKEN: (Indicate specific program for improvement, correction of deficiencies, measurement criteria, and consequences if improvement is not achieved and continued. Failure to remedy any deficiency may result in your termination.)

Further infractions of this nature will result in progressive disciplinary action up to and including suspension pending investigation as to whether discharge is warranted.

☒ **VERBAL WARNING**☐ **INVESTIGATORY SUSPENSION:**

Employee will be notified by supervisor of the outcome of the investigation.

☐ **WRITTEN WARNING**☐ **DISCIPLINARY SUSPENSION**

Date(s) of suspension: \_\_\_\_\_

Date of return: \_\_\_\_\_

The above performance improvements are required immediately or by \_\_\_\_/\_\_\_\_/\_\_\_\_ and are expected to continue thereafter.

I have read and discussed the above and received a copy:  
(SIGNATURE ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTICE)X *Reno Hilton*  
Employee's Signature DateX *[Signature]*  
Supervisor's Signature Date

EMPLOYEE COMMENTS (continue on reverse, if needed):

**Exhibit B**



*Reno Hilton***Performance Improvement Notice**

EMPLOYEE NAME: <u>Ran Lau</u>	POSITION: <u>Server</u>	DATE OF INCIDENT: <u>3/11/05</u>
DEPT./GAME: <u>Asiana</u>	MANAGER: <u>Mark Wilson</u>	D.O.H. <u>5/22/97</u>
		I.D.# <u>79769</u>

YOUR CONDUCT AND / OR WORK PERFORMANCE IS UNSATISFACTORY FOR THE FOLLOWING REASON:

1. ☐ RECORD OF PROCEDURAL ERROR**R•O•P•E**2. ☒ EMPLOYMENT RULES VIOLATION**E•R•V**3. ☐ OTHER DISCIPLINARY ACTION

DESCRIBE THE UNSATISFACTORY CONDUCT OR PERFORMANCE:

On 3/11/05 you came into Asiana at 4pm and told me that your tooth was hurting from the Dentist. You said you could not work that night. Your shift was to start at 4:30pm. That is an Improper call-in. You must call-in ~~at least~~ before the start of your shift.

WITNESS(ES) INVOLVED:

Mark Wilson

PREVIOUS INCIDENT(S):

None in file

CORRECTIVE ACTION TAKEN: (Indicate specific program for improvement, correction of deficiencies, measurement criteria, and consequences if improvement is not achieved and continued. Failure to remedy any deficiency may result in your termination.)

Further infractions will result in the next step of disciplinary action, up to and including suspension pending, as to ~~weather~~ discharge is warranted.

☒ **VERBAL WARNING**☐ **INVESTIGATORY SUSPENSION:**

Employee will be notified by supervisor of the outcome of the investigation.

☐ **WRITTEN WARNING**☐ **DISCIPLINARY SUSPENSION**

Date(s) of suspension: \_\_\_\_\_

Date of return: \_\_\_\_\_

The above performance improvements are required immediately or by \_\_\_\_/\_\_\_\_/\_\_\_\_ and are expected to continue thereafter.

I have read and discussed the above and received a copy:  
(SIGNATURE ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTICE.)

X *Ran Lau*  
Employee's Signature Date

X *Mark Wilson* 3/12/05  
Supervisor's Signature Date

EMPLOYEE COMMENTS (continue on reverse, if needed):

Exhibit C

OFFICE USE ONLY	STATE OF NEVADA Department of Business and Industry <b>OFFICE OF THE LABOR COMMISSIONER</b> 555 E. Washington Ave. #4100    675 Fairview Drive Suite 226 Las Vegas, Nevada 89101    Carson City, Nevada 89701 (702) 486-2650    (775) 687-4850	OFFICE USE ONLY
<b>EMPLOYMENT COMPLAINT</b> (DO NOT USE THIS FORM TO CLAIM UNPAID WAGES OR COMMISSIONS)		

<p style="text-align: center;"><b>COMPLAINANT INFORMATION</b></p> <p>Name <u>NAM</u> <u>S</u> <u>LAU</u>  <small>First MI Last</small></p> <p>Address <u>3596</u> <u>Gypsum Rd.</u> <u>2</u>  <small>Number Street Apt.#</small></p> <p><u>Reno</u> <u>NV</u> <u>89503</u>  <small>City State ZIP</small></p> <p>Home phone <u>(775) 722-2233</u></p> <p>Other phone ( )</p> <p>Job title <u>Foodserver</u></p> <p>Department <u>Asiana</u></p> <p>1. Does this employer currently employ you? <u>Yes</u> No</p> <p>2. Did this employer previously employ you? <u>Yes</u> No</p> <p>3. Do you agree to be present at any pre-hearing conferences or administrative or judicial hearings scheduled, if necessary, to present testimony and other evidence related to your complaint? <u>Yes</u> No</p> <p>4. Do you have or are you aware of any documentary evidence that will substantiate your complaint? <u>Yes</u> No        If so, please provide copies. If you cannot provide copies, explain where the information is located.</p> <p>5. Do you know of any witnesses that could provide additional information? <u>Yes</u> No        If so, please provide names and information that will enable us to contact your witnesses.</p> <p>6. Are you now or have you been involved in any lawsuits or other legal proceedings with this employer? <u>Yes</u> <u>No</u>        If so, please explain on an attached sheet of paper.</p> <p>7. Do you have the financial ability to hire an attorney to assist you with your complaint? <u>Yes</u> No</p>	<p style="text-align: center;"><b>EMPLOYER INFORMATION</b></p> <p>Business Name <u>Reno Hilton</u></p> <p>Location <u>2500 East Second ST</u>  <small>Number Street</small></p> <p><u>Reno</u> <u>NV</u> <u>89593</u>  <small>City State ZIP</small></p> <p>Mailing Address        (if different) <u>                    </u>  <small>Number Street or PO Box</small></p> <p><u>                    </u> <u>                    </u> <u>                    </u>  <small>City State ZIP</small></p> <p>Business phone <u>(775) 789-2268</u></p> <p>Owner/Manager/Supervisor Name:  <u>Mark Wilson</u>  <small>First Last</small></p> <p>Type of Business <u>Food</u></p> <p>Subject of Complaint <u>Break Entitlement</u></p> <p>Is the activity upon which your complaint is based:  <input checked="" type="checkbox"/> Company policy    <input type="checkbox"/> Department policy  <input type="checkbox"/> Problem with a particular manager/co-worker</p>
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STATEMENT OF COMPLAINT (Please provide a short description of the employment practice that is the reason for your complaint. Be complete as to what the policy is, how it is communicated to the employees, when the incident(s) took place or whether it is ongoing and so forth. Use additional pages if necessary.)

I worked 6 or more hours never have break.  
 my union contract, 6 or more hours have  
 30 minute paid meal period and one 10-minute break.  
 (one Free meal during shift).

I CERTIFY THAT THE INFORMATION CONTAINED IN THE FOREGOING COMPLAINT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. (SIGNATURE NOT NEEDED FOR ANONYMOUS OR FIELD COMPLAINTS)

Signed

*John Slaw*

Date

3-28-05

**OFFICE USE ONLY**

COMPLAINT TAKEN BY: \_\_\_\_\_

\_\_\_ VERIFIED COMPLAINT \_\_\_ ANONYMOUS COMPLAINT \_\_\_ TELEPHONE/FIELD COMPLAINT

INVESTIGATOR, IF ASSIGNED \_\_\_\_\_

ALLEGED VIOLATION(S): \_\_\_\_\_ STATUTE: NRS \_\_\_\_\_

\_\_\_\_\_ STATUTE: NRS \_\_\_\_\_

\_\_\_\_\_ STATUTE: NRS \_\_\_\_\_

\_\_\_\_\_ STATUTE: NRS \_\_\_\_\_

HAS THIS EMPLOYER BEEN CONTACTED CONCERNING THE SAME OR SIMILAR VIOLATIONS IN THE PAST? YES \_\_\_ NO \_\_\_ UNKNOWN \_\_\_

DISPOSITION \_\_\_\_\_